

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
JAFFREY, TOWN OF)	FCC File No. 0000583849
)	
Request for Reinstatement of License for)	
Conventional Public Safety Pool Station KCF416,)	
Jaffrey, New Hampshire)	
)	
SPOFFORD FIRE DISTRICT)	FCC File No. 0000583853
)	
Request for Reinstatement of License for)	
Conventional Public Safety Pool Station KCE935,)	
Spofford, New Hampshire)	

ORDER

Adopted: February 19, 2002

Released: February 25, 2002

By the Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Division:

1. *Introduction.* On September 5, 2001, the Spofford City Fire District (Spofford) and the Town of Jaffrey, New Hampshire (Jaffrey) filed the above-captioned renewal applications for Conventional Public Safety Pool Stations KCE935¹ and KCF416,² respectively. Spofford and Jaffrey jointly requested waiver³ of Section 1.949⁴ of the Commission's Rules to allow the applications to be filed late. For the reasons stated below, we deny Spofford and Jaffrey's waiver request and dismiss their applications.

2. *Background.* Stations KCE935 and KCF416 are both authorized to operate on frequencies 153.7700 MHz and 154.4300 MHz and are used for fire department activities and communications in the Cheshire County, New Hampshire area. On April 30 and May 7, 2001, the Commission sent letters to Spofford and Jaffrey, respectively, reminding them to renew their licenses for Stations KCE935 and KCF416. Approximately three months later, on July 23 and August 4, 2001, respectively, Spofford and Jaffrey's licenses expired. On September 5, 2001, SWNH District Fire Mutual Aid (SWNH) filed the above-captioned renewal applications on behalf of Spofford and Jaffrey.⁵

¹ FCC File No. 0000583853 (filed Sept. 5, 2001).

² FCC File No. 0000583849 (filed Sept. 5, 2001).

³ Waiver Request filed by Dale R. Paquin, SWNH District Fire Mutual Aid, on behalf of the Town of Jaffrey and Spofford Fire District (filed Sept. 5, 2001) (Waiver Request).

⁴ Section 1.949 of the Rules requires that an application for renewal of a wireless license be filed by the expiration date of that license. *See* 47 C.F.R. § 1.949.

⁵ SWNH also stated that it would request Special Temporary Authority (STA) to permit Spofford and Jaffrey to continue operating on frequencies 153.7700 MHz and 154.4300 MHz. Waiver Request at 1. The Commission granted the STA request and authorized Spofford and Jaffrey to operate Stations WPTR219 and WPTR970,
(continued...)

3. In a letter attached to the renewal applications, SWNH requested a waiver to permit Spofford and Jaffrey to file their applications late.⁶ SWNH states that Spofford and Jaffrey are accustomed to having renewal forms sent to them, and in certain instances they will contact SWNH for assistance in renewing their licenses “well into the window of renewal opportunity.”⁷ SWNH states that Spofford and Jaffrey contacted SWNH after the applicants experienced technical difficulties with the Commission’s Universal Licensing System (ULS)⁸ online database.⁹ SWNH states that it attempted to assist Spofford and Jaffrey and that it also experienced difficulties with ULS.¹⁰ SWNH further states that its staff often is unavailable to receive Commission phone calls.¹¹ SWNH therefore requested waiver so that Spofford and Jaffrey would not have to file new applications.¹²

4. *Discussion.* The Commission’s policy regarding the treatment of late-filed renewal applications in the wireless services applies to this situation.¹³ Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission’s Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.¹⁴ Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.¹⁵ In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.¹⁶

5. Spofford and Jaffrey’s waiver request does not address the Commission’s policy

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respectively. See FCC File Nos. 0000668381 (filed Nov. 27, 2001) and 0000680283 (filed Dec. 3, 2001). We note that Spofford and Jaffrey’s STAs are scheduled to expire on May 28 and June 6, 2002, respectively.

⁶ Waiver Request.

⁷ See *id.*

⁸ In September 1998, the Commission adopted rule changes designed to implement the ULS, the integrated database and automated processing system developed to facilitate electronic filing of wireless applications, licensing information, and public access to such information for all wireless radio services. See Biennial Regulatory Review-Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Amendment of the Amateur Service Rules to Authorize Visiting Foreign Amateur Operators to Operate Stations in the United States, *Report and Order*, WT Docket Nos. 98-20, 96-188, 13 FCC Rcd 21027 (1998).

⁹ Waiver Request.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476 (1999).

¹⁴ *Id.* at 11485 ¶ 22.

¹⁵ *Id.* at 11486 ¶ 22.

¹⁶ *Id.* at 11485 ¶ 22.

regarding late-filed renewal applications. They contend that they failed to timely renew because they experienced difficulties with ULS and SWNH staff often are unavailable to receive FCC phone calls. This argument is unavailing. To the extent the delay resulted from the unavailability of SWNH's staff, Spofford and Jaffrey must bear responsibility for that failure as SWNH was acting as their agent.¹⁷ In addition, to the extent Spofford and Jaffrey's failure to timely file was caused by technical difficulties, we note that the Wireless Telecommunications Bureau announced on October 6, 2000 that it would implement Phase II of a three-phased conversion of Land Mobile Radio Services, including Conventional Public Safety Pool licenses, to the ULS on October 24, 2000.¹⁸ Spofford and Jaffrey, and for that matter SWNH, thus had more than nine months to familiarize themselves with ULS and to ensure that they had the capability needed to file with ULS. Moreover the waiver request does not explain how the unspecified technical difficulties caused Spofford and Jaffrey to file their renewal applications more than a month late. Accordingly, Spofford and Jaffrey have not shown good cause for a waiver of Section 1.949 of the Commission's Rules.

6. In addition, Spofford and Jaffrey's waiver request fails the stricter standard of review required by the Commission's policy for treatment of renewal requests filed more than thirty days after the license expiration date. Spofford and Jaffrey's licenses expired on July 23, 2001 and August 4, 2001, respectively. Spofford and Jaffrey filed their renewal applications on September 5, 2001, more than thirty days from the date their licenses expired. In determining whether to grant a late-filed renewal application *nunc pro tunc*, we must consider all the facts and circumstances. In the instant case, and for the reasons previously stated, we are not persuaded that Spofford and Jaffrey's arguments merit renewal of its license *nunc pro tunc*. As the Commission has stated, "That a licensee is engaged in public safety activities does not justify a lesser degree of diligence in complying with our renewal procedures."¹⁹ Thus, we deny Spofford and Jaffrey's request for a waiver to permit late renewal of their licenses.

7. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver of Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, filed by Town of Jaffrey, New Hampshire, and Spofford Fire District, on September 5, 2001, IS DENIED, and applications FCC File Nos. 0000583849 and 0000583853, ARE DISMISSED.

¹⁷ A licensee bears full responsibility for actions or omissions of its agent in filing renewal application. *See, e.g.*, ACC Network, *Order*, DA 01-2935 ¶ 6 (WTB PS&PWD Dec. 28, 2001). *See also, e.g.*, Denver Partners, et al., *Order*, 13 FCC Rcd 14051, 14053 ¶ 6 (WTB CWD 1998) (citing RDH Communications, Limited Partnership, for Construction Permit for a New FM Station on Channel 297A in Baker, Louisiana, *Memorandum Opinion and Order*, 6 FCC Rcd 4764, 4764-65 (1991) ("the applicant bears the full burden of its (or its agents') failure to file a complete application"); Roberts Cellular, Inc. for Facilities in the Domestic Public Cellular Radio Telecommunications Service on Frequency Block A in Market 199, Steubenville-Weirton, Ohio-West Virginia Metropolitan Statistical Area, *Memorandum Opinion and Order*, 5 FCC Rcd 1357, 1361 ¶¶ 30-31 (CCB Mob. Serv. Div. 1990), *aff'd*, *Memorandum Opinion and Order*, 9 FCC Rcd 281, 283 (CCB 1994) (citing Lorain Community Broadcasting Co., *Order*, 18 FCC 2d 686 (1969); Advanced Business Communications, Inc., *Memorandum Opinion and Order*, 2 FCC Rcd 3751 (CCB Mob. Serv. Div. 1987) (although cellular application was prepared by a firm engaged for this purpose, the applicant is completely responsible for the information conveyed in its application).

¹⁸ Wireless Telecommunications Bureau (WTB) Implements Phase II of Three-Phased Deployment of the Universal Licensing System (ULS) For Land Mobile Radio Services on October 24, 2000, DA 00-2292, *Public Notice*, 15 FCC Rcd 19761 (WTB 2000).

¹⁹ *See* Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 ¶ 20 (1991); *see also, e.g.*, North Eastern Massachusetts Law Enforcement Council, *Order*, 16 FCC Rcd 12474, 12475-6 ¶ 6 (WTB PS&PWD 2001).

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Ramona E. Melson
Deputy Chief
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau